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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 LENS CRAFTERS, INC.; and EYEXAM OF
 12 CALIFORNIA, INC.,

13 Plaintiffs,

14 vs.

15 LIBERTY MUTUAL FIRE INSURANCE
 16 COMPANY; EXECUTIVE RISK
 17 SPECIALTY INSURANCE COMPANY;
 18 UNITED STATES FIRE INSURANCE
 19 COMPANY; MARKEL AMERICAN
 20 INSURANCE COMPANY; and
 21 WESTCHESTER FIRE INSURANCE
 22 COMPANY,

23 Defendants.

24 CASE No. CV-07-2853 SBA

25 **AMENDED NOTICE OF MOTION TO
 26 DISMISS LENS CRAFTERS' SECOND
 27 AND THIRD CLAIMS FOR RELIEF**

28 Date: January 29, 2008

Date: 1:00 P.M.

Courtroom: 3

Judge: Hon. Saundra B. Armstrong

NOTICE OF MOTION

PLEASE TAKE NOTICE that on January 29, 2007 at 1:00 p.m. in courtroom 3 of the United States District Court for the Northern District of California, located at 1301 Clay Street, 3rd Floor, Oakland, California, Defendant Markel American Insurance Company will move to dismiss the second and third claims for relief in the First Amended Complaint filed by plaintiffs LensCrafters, Inc. and Eyexam of California, Inc.

This Motion is brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that plaintiff's second claim for relief: breach of contract re defendants' duty to indemnify and duty to settle, and plaintiffs third claim for relief: tortious breach of the covenant of good faith and fair dealing, as alleged in plaintiffs' First Amended Complaint, both fail to state a claim upon which relief can be granted.

This motion is based on the Memorandum of Points and Authorities previously filed by Markel, all pleadings and papers on file in this action, and on such further argument and evidence as the Court may consider at the hearing of this motion.

Dated: October 29, 2007

LONG & LEVIT LLP

By

Chip Cox
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Attorneys for Defendant
MARKEL AMERICAN
INSURANCE COMPANY

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